

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.12.09.2011

CORAM:

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.A.No.230 of 2006

1. Sekar

S/o. Palaniappa Gounder

2. Panneerselvam

S/o.Kandasamy Gounder ... Appellants

Vs.

State rep. by

Dy. Superintendent of Police,

Puduchatram P.S.

Namakkal District. ... Respondent

Prayer: Appeal is filed under Section 374(2) of Cr.P.C. against the judgment dated 16.02.2006 and made in S.C.No.73 of 2005 on the file of the learned Principal District & Sessions Judge (Special Court under Schedule Caste & Schedule Tribes (PA) Act 1989, Namakkal District.

For Appellants : Mr.D. Shivakumar

For Respondent : Mr.A.N.Thambidurai

(Addl. Public Prosecutor)

J U D G M E N T

1. Challenge is made in this appeal to the order of conviction and sentence dated 16.02.2006 and made in S.C.No.73 of 2005 on the file of the Learned Principal District and Sessions Judge (Special Court under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act) 1989, Namakkal.

2. That on 07.12.2004, PW 8 the Deputy Superintendent of Police, Namakkal had laid a charge sheet against the appellants 1 and 2 under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (PA) Act and under Sections 506(1) and 509 of IPC before the Learned Judicial Magistrate No.II, Namakkal, alleging that on 16.11.2004 at about 05.00pm., near the road leads to Pudhuchatram from Lakapuram, the appellants 1 and 2 had abused PW 1 and PW 2 viz., Tamarai and Sarasu in the name of their caste as they being the members of Scheduled Caste, with an intention to insult or intimidate or humiliate them within the public view and with an intention to insult their modesty and intrude upon their privacy.

3. The Learned Judicial Magistrate No.2, Namakkal had taken cognizance of the offences and committed the case to the Court of Sessions after completion of preliminary enquiry. On receipt of the case, the Learned Principal Sessions Judge, Namakkal Sessions Division, after hearing both sides had framed the following three charges;

Charge NO.1 □ Under Section 3(1)(x) of Scheduled Caste & Scheduled Tribes (PA) Act 1989.

Charge No.2 - Under Section 506(1) of IPC.

Charge NO.3 □ Under Section 509 of IPC.

4. When the ingredients of the charges were explained and questioned, the appellants 1 and 2 had pleaded their innocence and claimed to be tried. Hence, they were put on trial. The prosecution in order to bring home the guilt of the appellants had totally examined 9 witnesses and during the course of their examination Exs.P1 to P13 were marked.

5. The facts in brief which giving rise to the appeal as under;

5.1. PW 1 Tamarai and PW 2 Sarasu are the residents of Navani Idayapatti Village. They are belonged to Arundhathiyar community. The appellants 1 and 2 are also the residents of the same village and belonged to Gounder community. A graveyard is located on the western side of the village. Since, the residents of the village of PW 1 and PW 2 are not having lavatory facility they have been using the said graveyard to answer the call of nature. The land of first appellant is located on the northern side of the said graveyard. The second appellant is also having his land on the northern side of the first appellant's land. That on 16.11.2004 at about 04.00pm., both PW 1 and PW 2 had been to the said graveyard for answering the call of nature.

5.2. While so, the appellants 1 and 2 who were present there had abused them in the name of their caste and threatened them that they would break their hands and legs if they happened to come again that side. This was witnessed by PW 3 and PW 4. Fearing danger PW 1 and PW 2 started running and climbed on the road leading to Natamangalam from Pudhuchatram. Since, the appellants had abused them in the name of their caste in the presence of PW 3 and PW 4 they got annoyed and humiliated. At about 06.00pm., PW 1 had informed this incident to her husband Sengotayan and thereafter she long with her husband had been to Namakkal and lodged a complaint under Ex.P1 before the District Superintendent of Police.

5.3. That on 17.11.2004, PW 8 Deputy Superintendent of Police, Namakkal Sub-Division had received the complaint under Ex.P1 from the office of the Superintendent of Police with an endorsement under Ex.P8 to register a case. Accordingly PW 8 had forwarded the said complaint to the Inspector of Police attached to Pudhuchatram Police Station to register the case. The endorsement made by PW 8 on the complaint was marked as Ex.P9.

5.4. In pursuant to Ex.P9, PW 7, Sub-Inspector of Police attached to Pudhuchatram Police Station had registered a case on 17.11.2004 in Crime No.307 of 2004, under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (PA) Act 1989 and thereafter he had forwarded the first information report, Ex.P7 along with the complaint Ex.P1 to the Learned Judicial Magistrate No.II, Namakkal. He had also submitted a requisition to the Superintendent of Police, Namakkal to nominate an investigating officer.

5.5. In pursuant to the requisition made by PW 7, the District Superintendent of Police had nominated PW8 Deputy Superintendent of Police as the investigating officer vide in his order dated 17.11.2004 bearing No.CM98/TCR/Namakkal/2004. The Order of the District Superintendent of Police was marked as Ex.P10.

5.6. On receipt of the case records, P.W.8 had been to the place of occurrence on 18.06.2004 at

about 06.00 a.m., inspected the same and prepared an observation mahazar under Ex.P3 in the presence of the witnesses viz.P.W.5 Sunder Raj and one Sadashivam. He had also prepared a rough sketch in respect of the place of occurrence under Ex.P11. Then he had examined the witnesses P.W.3 and P.W.4 and other witnesses and recorded their respective statements. At about 09.30 am., he had arrested the second appellant after explaining him the reason for his arrest under Ex.P12 and sent him to Court for being remanded to judicial custody.

5.7. That on 19.11.2004, he had given a request under Ex.P13 to P.W.6 Tahsildar requesting to issue community certificate in respect of P.W.1 and P.W.2 and the appellants 1 and 2 respectively.

5.8. In pursuant to Ex.P13, P.W.6 had issued Ex.P3 and Ex.P4 community certificates in respect of P.W.1 and P.W.2 saying that P.W.1 and P.W.2 are belonged to Hindu Arundhathiyar community, which comes under the category of Scheduled Caste as per the Government Order. Similarly, he had also issued Exs.P5 and P6 in respect of the appellant 1 and 2 saying that they are belonged to Hindu Vellalar community, which comes under the category of backward class.

5.9. The first appellant had voluntarily surrendered before the Court. After the completion of his investigation, P.W.8 had laid a final report against the appellants 1 and 2 on 07.12.2004 before the learned Judicial Magistrate, Namakkal. With the evidence of P.W.8, the prosecution has closed its side.

6. When the incriminating circumstances arising out of the testimonies of the prosecution witnesses ranging from PW 1 to PW 8 were read over and explained to the appellants 1 and 2 during the course of the proceedings under Section 313 Cr.P.C., while denying their testimonies they had jointly replied that there was previous enmity between them and PW 4 Ramasamy. DW 6 Mr.Swaminathan, Inspector of Police who was working in the District Police Office at Namakkal was also placed in additional charge of Puduchatram Police Station. In order to settle a civil dispute between the appellants and PW 4 Ramasamy, the appellants were asked to come to the office of the District Police Head Quarters at Namakkal. Besides this they were also compelled to settle the dispute with PW 4. Hence, the first appellant had approached his lawyer and caused a notice to be served on the Inspector of Police, DW 6 Mr.Swaminathan as well as on the District Superintendent of Police.

7. Apart from this there was also a dispute between the first appellant and one Sengodan who is the relative of PW 2 Sarasu. In this connection the first appellant was also compelled to provide a cart track in his land. With regard to this he had also filed a civil suit. Under the above circumstances in order to wreck vengeance PW 4, with the evil design to foist a criminal case that to under Scheduled Caste and Scheduled Tribes (PA) Act against the appellants had used PW 1 and 2 as an instrument to lodge the complaint against them.

8. In support of the case of the defence, the appellants had examined 6 witnesses on their part and during the course of their examination Exs.D1 to D17 were marked. Apart from this Exs.C1 and C2 were also marked as the court documents.

The case of the defence:

9. DW 1 is the first appellant whereas DW 2 is the second appellant. Both the appellant are having their own cultivable lands in Navani Idayapatti Village. The agricultural land belonging to the first appellant is comprised in Survey No.32/3. Besides this he is also having agricultural lands on the western side as well as on the northern side of Arundhathiyar colony. A panchayat road is running east-west on the southern side of the land comprised in Survey No.32/3. This metal road leads from Puduchatram to Lakapuram. PW 4 is also having his land near the land of the appellant. A cart track

is lying in between the land of the appellants. In this connection there was an enmity prevailing between the first appellant and one Kaliannan, Ramasamy, Karupannan, Raju and one Selvi. Several case is also pending in respect of the above said cart track. On account of this PW 4 Ramasamy and Kaliannan and others had assaulted the first appellant. Both the groups had lodged complaints against each other. Since several criminal and civil cases are pending a constable attached to Puduchatram Police Station had asked the first appellant to come to Namakkal S.P. Office. At that time DW 6, Mr.Swaminathan was placed as in additional charge of the Inspector of Police at Puduchatram Police Station. But the first appellant did not go and meet him. He was also compelled to come and settle the dispute with regard to the cart track. But the appellants had issued a notice through their lawyer to the DW 6, Inspector of Police, Swaminathan as well as to the Namakkal Superintendent of Police. The copy of the lawyer's notice was marked as Ex.D11.

10. After the issuance of the notice through their lawyer PW 4 Ramasamy one karupannan, katai @ Raman, Jaganathan and one Sundar Raj had claimed that the land belonging to the first appellant was used as graveyard. On account of this reason, the first appellant and his mother had filed a civil suit. The copy of the plaint was marked as Ex.D3. When the matter stood thus, PW 1 had lodged the complaint on 16.11.2004 against the appellants alleging that they had abused them in the name of their cast. In fact this case was foisted against them. The land comprised in Survey No.32/3 is belonged to the first appellant and his mother. PW 1 to PW 5 are working in the farm belonging to PW 4. Therefore, this case has been foisted only on the instigation of PW 4. In fact, the appellants had nothing to do with PW 1 and PW 2 and equally they had no animosity against them.

11. PW 4 Ramasamy is the aunts' son of DW 3 Palanichamy. There is no enmity between PW 4 and DW 3. There is neither graveyard nor any public toilet in between the land of the first appellant and Arundhathiyar colony. PW 4 Ramasamy's land is lying just 100ft. away from the land of the first appellant. No such incident was taken place on 16.11.2004 alleging that the appellants had abused PW 1 and PW 2 in the name of their cast. The witnesses PW 1 to PW 5 have been working under PW 4 Ramasamy as agricultural coolie's. They used to go for agricultural work through the land of PW 4 Ramasamy.

12. DW 4 is the Postal Superintendent. He has spoken to about the service of notice and summons through registered post to the Inspector of Police, Swaminathan attached to Puduchatram Police Station as well as to the Superintendent of Police, Namakkal.

13. DW 5 is working as Superintendent in the office of Deputy Inspector General of Police, Salem. He has spoken to about the transfer of Mr.Swamynathan Inspector of Police to Puduchatram Police Station from Paramati Police Station. Ex.C2 is the order of posting of the Inspector of Police (CATE-I) as Deputy Superintendent of Police passed by the Deputy Inspector General of Police, Salem range. Ex.C1 is the transfer and posting of the Inspector of Police dated 28.06.2004, ordered by the Deputy Inspector General of Police, Salem Range. As per Ex.C2, DW 6 Mr.Swaminathan, Inspector of Police attached to Puduchatrm Police Station was promoted as Deputy Superintendent of Police and posted at Tiruvarur District. He has admitted that he had received a lawyers notice Ex.D11 which was sent by the appellants. Ex.D13 is the acknowledgment receipt.

14. On evaluating the evidences both oral and documentary, the learned Special Judge, under Scheduled Caste & Scheduled Tribes (PA) Act 1989 (Principal District and Sessions Judge), Namakkal had found the appellants 1 and 2 guilty under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (PA) Act 1989 and under Sections 506(1) and 509 of Indian Penal Code convicting and sentencing them as aforestated.

15. Challenging the order of conviction and sentence the appellants have approached this Court by way of this appeal.

16. Heard the learned counsel for the appellants as well as the learned Additional Public Prosecutor appearing for the respondent/state.

17. Out of 3 charges, which are manifested from the records, the first charge under Section 3(1) of (PA) Act 1989 seems to be the prime one.

18. Section 3 of Scheduled Caste and Scheduled Tribes (PA) Act 1989 (it may hereinafter be referred to as the Act) deals with the punishment for offences of atrocities. Sub-Section 1 to Section 3 enacts as under:

"Who ever not being a member of a Scheduled Caste or Scheduled Tribes.-

Clause (x) to Sub-Section (1) of Section 3 of the Act reads as follows;

"Intentionally insults or intimidates with intend or humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view."

19. In accordance with the first charge the accusation leveled against the appellants 1 and 2 is that on 16.11.2004 at about 05.00pm., when PW 1 and PW 2 were proceeding to the graveyard belonging to Arundhathiyar community for answering the call of nature, the appellants 1 and 2 were present in the agricultural land belonging to the first appellant which is lying proximate to Lakapuram Puduchatram road. On noticing them, the appellants 1 and 2 had abused PW 1 and PW 2 in the name of their caste with obscene language in public place within public view and thereby PW 1 and PW 2 were humiliated.

20. To attract the proviso to Clause(x) to Sub-Section (1) of Section 3 of the Act, the following ingredients are very much essential.

- 1.The person who is accused of, shall not be a member of the Scheduled caste or Scheduled tribe.
- 2.The person who is aggrieved shall be a member of the Scheduled caste or Scheduled tribe.
- 3.Criminal intention to insult or intimidate or to humiliate.
- 4.The occurrence should have taken place in any place within public view.

21. Clause (x) to Sub-Section 1 of Section 3 of the Act itself is very clear that whoever not being a member of Scheduled Caste or Scheduled Tribe intentionally insults or intimidates with intend or humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

22. Hence, the existence of mens rea or criminal intention to constitute an offence under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (PA) Act 1989 is very much essential. If there is no intention, no offence will constitute. And that is why, the legislators have carefully employed the words "intentionally insults".

23. The test of criminality depends upon the presence of criminal intent. The maxim "actus non facit reum, nisi mens sit rea" is then, as true here as it is in England. The above maxim conveys the meaning "the fact itself does not make a man guilty unless his intention was so".

24. In Wharton's Law Lexicon, 160th Year of Publication at page 40 the maxim "actus non facit reum, nisi mens sit rea" has been defined as follows;

□An act does not make a man guilty, unless there be guilty intention. This is one of the most important rules of criminal law. As a general rule of our law, a guilty mind is an essential ingredient of crime, and this rule ought to be borne in mind in construing all penal statutes.□

25. It is only when the mind is at fault, that a man can be held guilty of an offence. It is fundamental, too, what whenever and wherever there is a mistake on fact on which is founded a belief in good faith of justification by law of an act, the requisite state of mind that would make the author of the

act guilty is absent. Considered in this aspect, there is hardly any difference between mistake of fact and mistake of law, but it has been the policy of criminal jurisprudence of civilized countries that every individual shall be presumed to know the law and shall be debarred from pleading ignorance of law as an excuse. This principle is envisaged in king v. Tustipada Mandal reported in AIR 1951 Orissa 284 at p.289.

Whether the presence of appellants 1 and 2 and PW 1 and PW 2 in the place of occurrence has been established ?

26. Based on the fiction of prosecution, the presence of appellants 1 and 2 in the place of occurrence i.e., in the agricultural lands belonging to the first appellant which is lying proximate to the Lakapuram-Pudhuchatram road is very much doubtful. As per the case of the prosecution, PW 1 and PW 2 had been to the place of occurrence i.e., the burial ground belonging to Arundhathiyar community for answering the call of nature. In fact as revealed from the testimonies of PW 1 and PW 2, the burial ground where they had been to for answering the call of nature is a plain surface without any bushes. It is also revealed from the evidence of PW 2 that a burial ground belonging to Gounder Community is located near her residence wherein there are plenty of plants and bushes. In this connection, the learned counsel for the appellant would submit that the residential house of PW 2 is located in a garden, 1km., away from the new street. PW 1 Tamarai is residing along with her husband in the old street. The graveyard which is classified as "Government poramboke" is lying on the western side of the old colony. He would submit further that indeed no toilet facility was available to the people belonging to the Arundhathiyar community. They used the public places to answer the call of nature. PW 1 and PW 2 being ladies naturally they would not prefer plain surface to answer the call of nature on account of their social coy or timid nature. Above all they require privacy. Here the place in question does not have bushes or any hidden place so as to facilitate them to answer the call of nature. Hence, the selection of the place by PW 1 and PW 2 where the appellants 1 and 2 were present is highly unbelievable.

27. As it revealed from the evidence of PW 4 Ramasamy, who is said to be one of the eye witnesses for the offence, his land is located on the northern side of the land belonging to the first appellant. The second appellant's land is located on the northern side of PW4's land. Hence while advancing his arguments the learned counsel for the appellants had doubted the presence of the appellants 1 and 2 in the land of the first appellant. Equally, the presence of PW 1 and PW 2 in the place of occurrence has also been doubted. In this connection, the learned counsel for the appellants would further submit that the testimonies of PW 3 and 4 itself would go to show that they would not have been present in the place of occurrence at the alleged time of occurrence. He has also invited the attention of this Court to the evidences of PW 3 and PW 4 particularly to their cross-examination.

28. In his chief examination PW 4 has stated that on 16.11.2004, at about 05.00pm., he was irrigating mulberry plants in his land after returning from market. In his cross examination he would state that since, PW 3 was present there, he had been to that place only to see him. He has also deposed that neither PW 3 was belonged to his community nor he was related to him.

29. On coming to the evidence of PW 3 he would state that, when he was returning to his house in the evening from the work spot, by the side of the graveyard situated near the old colony, PW 1 and PW 2 were present in the graveyard and the appellants 1 and 2 were also present in their respective lands. While so, the appellants 1 and 2 had abused PW 1 and PW 2 and driven them from the place. PW 1 and PW 2 also came running towards the road abutting on the graveyard. While so, PW 4 Ramasamy was also present there. But PW 3 did not say anything about what PW 4 was doing at the time of occurrence. From the testimonies of PW 1 to PW 4 this court is able to infer that the presence of the appellants 1 and 2 in the place of occurrence, when PW 1 and PW 2 came there to

answer the call of nature is doubtful and highly unbelievable. Further the presence of PW 3 and PW 4 in the place of occurrence has also not been probablised by the prosecuting agency.

30. Mr.D.Shivakumar, the learned counsel for the appellants has also submitted that the two ladies viz., PW 1 and PW 2 would not have gone to such a place which is an open area without any privacy to attend the natures call that too at 05.00pm., in the evening. He would contend further that when a burial ground meant for Gounder community which is situated very close to their residence with thorny bushes which could provide necessary privacy is available it is highly improbable to say that both of them had chosen a place without privacy which is more than 1 km., away from their residence. He would contend further that the graveyard where PW 1 and PW 2 had gone, is abutting on main road. He has added further that at 5pm., in the open space which is proximate to the main road, they would not have gone there for the purpose of answering the natures call. He has also contended that the contradictions between the testimonies of PW 3 and PW 4, regarding the presence of PW 1 and PW 2, at the alleged seen of occurrence created doubt and hence, the story of the prosecution is completely shrouded with suspicion.

31. In the first charge leveled against the appellant under Section 3(1)(x) of the Act, it is stated that there was verbal altercation between the appellants and PW 1 and PW 2. But the alleged verbal altercation has not been substantiated by the prosecution. Apart from this it is stated in the charge sheet that the burial ground where PW 1 and PW 2 had gone to answer the call of nature is belonged to Arundhathiyar community. PW 6 Mr.Raju was working as Tahsildar at Rasipuram. At the relevant period of time i.e., on 30.11.2004, he was working as Namakkal Tahsildar. On the request made by PW 8, he had issued community certificates in respect of PW 1 and PW 2 as well as the appellants 1 and 2 saying that PW 1 and PW 2 are belonged to Scheduled Caste whereas the appellants 1 and 2 are were belonged to Gounder Community. Ex.P13 is the request given by PW 8 to PW 6 Tahsildar to provide particulars for the following queries.

- 1.Whether the graveyard which is situated on the western side of Arundhathiyar street is poramboke land or a patta land ?
- 2.If it is poramboke land what is it's extent ?
- 3.Whether the graveyard which is used by the Arundhathiyar community people had been in use from the time memorial or it is in use from the recent past ?
- 4.What is the extent and survey no. of patta land belonging to the first appellant, which is located on the northern side of the graveyard.

32. Ex.D7 is the reply given by PW 6 to the request given by PW 8, in which he has stated that the land which is located on the western side of Arundhathiyar street has been comprised in survey no.32/3 and as per the Revenue records it is patta land bearing Patta No.1163, stands jointly in the name of one Palaniappan and Mrs.P.Nallammal, who are the parents of the first appellant. The total extent of the said land is 2.3.50 hectares. PW 6 would further state in Ex.D7 that the said land is belonged to the first appellant through their parents and hence, it is not a Government poramboke land. PW 6 would further state in the above said report (D7) that the graveyard belonging to the Arundhathiyar community people is located 1 km., away from their street and that the graveyard is comprised in Survey No.332/1 which is classified as Government Poramboke waste land measuring 0.25.0 hectares. He has also appended a sketch with regard to the land comprised in Survey No.32.

33. In this connection Mr.D.Shivakumar, the learned counsel for the appellants would submit that there was no graveyard exclusively for children in Arundhathiyar community in the land comprised in Survey No.32/3 and that it was a patta land belonging to the first appellant's father and mother.

34. On perusal of the testimonies of PW 6 and his report under Ex.D7, it is clear that there is no Government poramboke land for being used as graveyard for Arundhathiyar community on the

western side of the Arundhathiyar street. From the perusal of the evidences of PW 1 to PW 4, this court finds that their evidence are not adequate to probablize the presence of the appellant 1 and 2 in the place of occurrence at the relevant period. Apart from this the presence of PW 3 and PW 4 in the place of occurrence has also not been established by the prosecuting agency by adducing acceptable evidences.

Genesis of Complaint (Ex.P1)

35. Ex.P1 is the complaint lodged by PW 1 before the Superintendent of Police, Namakkal. Admittedly, the Superintendent of Police with whom the complaint was lodged has not been examined by the prosecuting agency for the reasons best known to them. The complaint seems to have been dated as 16.11.2004. The endorsement made by the Superintendent of Police, Namakkal has been marked as Ex.P8 whereas the endorsement made by PW 8 Deputy Superintendent of Police has been marked as Ex.P9. Both Exs.P8 and P9 have been dated as 17.11.2004 and marked through PW 8 who is the investigating officer. In Ex.P8, Superintendent of Police, Namakkal District has directed the Deputy Superintendent of Police viz., PW 8 to register a case and to take necessary action. On the next date i.e., on 17.11.2004. PW 8 has also made an endorsement on Ex.P9, directing PW 7, Sub-Inspector of Police attached to Puduchatram Police Station, to register a case and send the first information report for his investigation.

36. It is significant to note here that PW 1 and PW 2 are the aggrieved persons as per the case of prosecution. If at all a complaint is to be lodged, as per the submission made by the learned counsel for the appellants, PW 2 also should have joined along with PW 1 or should have been let known about the lodging of complaint. But PW 2 was not aware of the fact that PW 1 had lodged the complaint before the Superintendent of Police Namakkal along with her husband. It is pertinent to note here that PW 1's husband viz., Sengotaiyan who had also accompanied PW 1 to the office of the Superintendent of Police, has not been examined by the prosecution and for which no satisfactory explanation has been offered by the prosecution. Originally, the presence of PW 4 Ramasamy has not been mentioned in the complaint. It has been stated in Ex.P1 that the occurrence was known to one Palanichamy son of Mithusamy. He has been examined in the case as PW 3. The whole complaint appears to have been typed in computer and printed out. In the last two paragraphs there is an insertion in blue ink stating that the occurrence was also known to PW 4 Ramasamy, but with regard to this insertion PW 1, is not able to give proper explanation.

37. In this connection the learned counsel for the appellants has contended that this complaint under Ex.P1 might have been prepared after confabulation. He would submit further that Puduchatram Police Station is located just 4km., away from Navani Idayapatti Village. The office of District Superintendent of Police, Namakkal is located about 15 km., away from Navani Idayapatti Village. If at all any such occurrence was taken place as alleged by PW 1, she could have very well preferred the complaint before the Station House Officer at Puduchatram. Instead of preferring the complaint at Puduchatram Police Station she had preferred this complaint before the Superintendent of Police, Namakkal after travelling the distance of 15kms. He has also raised a question as to why PW 1 had avoided PW 2 for lodging the complaint. He has also contended that as per the case of the prosecution both PW 1 and PW 2 were abused in the name of their caste, by the appellants 1 and 2. In this connection he has also raised another question as to what prevented PW 2 in joining with PW 1 in lodging the complaint. These circumstances would lead this court to presume that the complaint might have been fabricated and the case also might have been foisted against the appellants. Hence, this Court is of considered view that the genesis of Ex.P1 complaint is doubtful.

38. The case of the defence is that DW 6, Swaminathan was placed in additional charge of Inspector of Police attached at Puduchatram Police Station. He was also working as Inspector of Police attached to Special Branch at the office of Namakkal District Superintendent of Police. The learned

counsel for the appellants would submit that there was a civil dispute between the appellants and one Kaliannan and others at the insistence of PW 4 Ramasamy, DW6 Swamynathan, Inspector of Police had threatened the appellants to settle the dispute regarding the path way and the alleged burial ground with Kaliasman and others. The learned counsel has also argued that DW 6 had also threatened the appellants that if the dispute was not settled with the said Kaliasman and others then a case would be registered against the appellants under Scheduled Caste and Scheduled Tribes (PA) Act 1989. Hence, the appellants were constrained to issue a notice through their lawyer to DW6 after marking a copy to the Superintendent of Police, Namakkal. The lawyers notice issued to DW 6 dated 08.09.2004 was marked as Ex.D11. In this connection in order to prove the defence case, the appellants 1 and 2 had examined themselves as DW 1 and DW 2. One Palanichamy was examined as DW 3. One Stalin, who was the Postal Superintendent and one Adhimulam who was the Superintendent of the Office of District Superintendent of Police were examined as PW's 3 to 5.

39. On perusal of Ex.D11 lawyers notice, dated 08.09.2004, it is revealed that several civil and criminal cases are pending between the appellants and one Kaliannan and others and PW 4 Ramasamy. It is also revealed that a civil suit was also pending between the appellants on one part and Kaliasman and others on the other part. It is stated in Ex.D11 lawyers notice, as if he had threatened the appellants to withdraw the civil suit which was filed by the appellants against PW 4 Ramasamy and Kaliasman and others with regard to a cart track and that if they failed to withdraw the civil suit a criminal case under Scheduled Caste and Scheduled Tribes (PA) Act would be registered through the people belonging to the Scheduled Caste. Admittedly, no reply was given by DW 6, to the above said notices. This notice is dated back to 08.09.2004. The complaint under Ex.P1 was lodged on 16.11.2004 i.e., after two months from the date of issuance of notice. Under these circumstances, the learned counsel for the petitioner would submit that this case has been completely foisted against the appellants only at the instance of PW 4 Ramasamy for which PW 1 and 2 have been used as an instrument and in fact no such occurrence was taken place as alleged by the prosecution.

40. He would further submit that the evidence available on record and the evasive answers given by PW 8 in his cross examination and the evidence of DW 6 Swamynathan, Inspector of Police, would clearly establish that the defence case of the appellants was more probable than the case of the prosecution.

41. With regard to Ex.P1 complaint, the learned counsel for the appellants would submit that if really, the complaint was prepared at the place where it was printed, normally the human conduct would be to ask the computer typist to take a fresh printout after the inclusion of the name of PW 4 Ramasamy. He would submit further that if really both signatures were made at the place where the complaint was printed, the ink in which PW 1 had signed would have been in the same colour and there would not have been any variation in the ink. The signature said to have been put by PW 1 on 16.11.2004 is in Black ink whereas the signature made by PW 1 in the insertion is in Blue ink. With regard to the variation of the ink as well the insertion, neither PW 1 nor PW 8 or PW 7 have given proper explanation.

42. The learned counsel has also further submitted that DW 6, Swaminathan Inspector of Police was having close nexus with the Superintendent of Police and that PW 6 was motivated by PW 4 to foist a case that to under the provisions of Scheduled Caste and Scheduled Tribe (PA) Act, against the appellants as they had refused to withdraw the civil suit which was filed by them against PW 4, Ramasamy, one Kaliasman and others.

43. DW 7 Sup-Inspector of Police attached to Puduchatram Police Station has deposed that on receipt of the complaint in Ex.P1 from the office of the Deputy Superintendent of Police on

17.11.2004, he had registered a case in Puduchatram Police Station Crime No.304 of 2004 under the provisions of Scheduled Caste and Scheduled Tribe (PA) Act 1989 and thereafter he had sent the complaint along with the first information report to the Learned Judicial Magistrate No.II, Namakkal. He would state further that for appointing an investigating officer in the case, he had submitted a report under Ex.P7 (not marked). It appears from the records that in pursuance of his requisition, the Superintendent of Police, Namakkal has passed an order dated 17.11.2004, nominating PW 8 Mr.R.Velayudham, Deputy Superintendent of Police, Namakkal as investigating officer under Scheduled Caste and Scheduled Tribe (PA) Rules 1995. In this connection PW 7 in his cross examination would state that he had received Ex.P1 on 17.11.2004 at about 7pm., from the office of the Deputy Superintendent of Police. Thereafter he had registered a case based on the above said complaint.

44. In Ex.P10, proceedings of the Superintendent of Police Namakkal District, no time has been mentioned to show that at what time the order nominating PW 8, to investigate the case was passed. As per PW 7, as seen from the reverse of Ex.P1, the first information report was registered at 7pm., on 17.11.2004. Thereafter, he had sent the requisition to the Superintendent of Police, Namakkal District to nominate an investigating officer. It is pertinent to note here that the distance between Puduchatram to Namakkal District Police Superintendent office is 15 kms. In this connection neither PW 7 nor PW 8 has given proper answer as to who had taken the requisition from Puduchatram Police Station to Namakkal District Police Office. It is also not explained by the prosecution that at what time, the District Superintendent of Police had passed the order nominating PW 8 as the investigating officer. In this regard PW 8 in his cross examination has deposed that the order of Superintendent of Police nominating him as the investigating officer was received belatedly in the night on 17.04.2004.

45. It is pertinent to note here that at the first instance the complaint under Ex.P1 was lodged by PW 1 on 16.01.2004. The time of receipt of the complaint was not mentioned by the Superintendent of Police. Then on 17.11.2004, it was forwarded to PW 8, with an endorsement under Ex.P8 to register a case and to take necessary action. Thus had in turn forwarded the complaint to PW 7 with an endorsement (Ex.P8 directing him to register a case and send the FIR for his investigation. As per Rule 7(1) of the Schedule Caste and Schedule Tribes (PA) Rules 1995, the Deputy Superintendent of Police cannot take the investigation suo motu unless he is nominated by the Superintendent of Police.

46. Rule 7(1) of Schedule Caste and Schedule Tribes (PA) Rules 1995 reads as follows;

□7. Investigating Officer □ (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director-General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.□

Sub-Rule 2 reads as follows;

□The investigating officer so appointed under sub-rule(1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.□

Sub-Rule 3 reads as follows;

□The Home Secretary and the Social Welfare Secretary to the State Government Director of Prosecution the officer-in-charge of prosecution and the Director-General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer.□

47. In so far as the present case on hand is concerned Sub-Rule 2 to Rule 7 has been violated by PW 8. Of course, the investigation seems to have been completed within a period of one month from the date of registration of the case. As per the case of the prosecution the FIR was registered on 17.11.2004 and as per the evidence of PW 8 he has filed the charge sheet on 07.12.2004 i.e., within one month period the investigation was completed and the charge sheet was also filed. But PW 8 has miserably failed to submit a report to the Superintendent of Police. After receiving that report, the Superintendent of Police shall immediately have to forward the report to the Director General of Police of the State Government. It is therefore, clear that the second para of Sub-Rule 2 has not been complied with by PW 8.

48. The learned counsel for the appellants in support of his contention has placed reliance upon two decisions;

1. Uma Shankar vs. State of U.P. reported in 1980 (Supp) SCC 407. In this case it is held that the witness admitted enmity in his testimony. Hence possibility of false implication being present and therefore, the appellant is entitled to benefit of doubt. It is also held that the enmity with the appellant having been shown, the vital change in the act attributed to the appellant at the trial as compared to that in the FIR significant enough to show possibility of false implication.

2. In Hardeep vs. State of Haryana and Another reported in (2002) 7 SCC 11. the Apex Court with regard to false implication has held that the Court should be careful and cautious where all the witnesses are related inter se and to the deceased and one of the accused acquitted on ground of being falsely implicated. It is further held that though minor contradictions and discrepancies are not fatal to the prosecution case but where there are glaring contradictions and false implication of accused, prosecution case becomes doubtful.

49. On coming to the instant case on hand the enmity between the appellants on one part and PW 4 and one Kaliannan and others on the other part has been established by the appellants through their defence evidences. PW 8 has also admitted in his cross examination that several criminal cases were pending against these two parties. It is also established through adequate legal evidence viz., Ex.D11 and the evidences of DW 5 and DW 6 Inspector of Police, who was placed in additional charge of the Inspector of Police, Puduchatram Police Station, that the place of occurrence comes under the jurisdiction of Puduchatram Police Station. It is also established that DW 6 had threatened the appellants to withdraw the civil suit which was filed by them against PW 4, Ramasamy one Kaliasman and others, otherwise a case under the provisions of the Scheduled Caste and Scheduled Tribes (PA) Act 1989 cannot be filed through the people belonging to Schedule Caste. It is also pertinent to note here that DW 6, Inspector of Police had not chosen to give any reply to the lawyers notice. Hence, the conduct of DW 6 lead this to draw adverse inference against him.

50. Having taken into consideration of all the related facts and circumstances, this court finds that possibility of false implication of the appellants in the criminality cannot be ruled out. The enmity between the appellants and PW 4, Kaliasman and others has been clinchingly and unambiguously proved. Since false implication is probablised the appellants are entitled to the benefit of doubt.

51. In the result, the appeal is allowed. The order of conviction and sentence dated 16.02.2006 and made in S.C.No.73 of 2005 on the file of the Learned Principal District & Sessions Judge (Special Court under Schedule Caste and Schedule Tribes (PA) Act 1989, Namakkal District are set aside, as the appellants are not found guilty under Section 3(1)(x) of Schedule Caste and Schedule Tribes (PA) Act and under Sections 506(1) and 509 of IPC. Hence they are set at liberty. The fine amount paid by the appellants shall be refunded. The bail bonds executed by and on behalf of the appellants are canceled.

prm

To

1.State rep. by
Dy. Superintendent of Police,
Puduchatram P.S.
Namakkal District.

2.The Learned Principal District
& Sessions Judge
Special Court under Schedule Caste
and Schedule Tribes (PA) Act 1989,
Namakkal District